

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CONSECO LIFE INSURANCE
COMPANY,

Plaintiff,

v.

JO ANN G. FUNKE, and LINDA B.
FUNKE,

Defendants.

4:11CV3047

**MEMORANDUM
AND ORDER**

On August 1, 2011, the court entered a memorandum and order enjoining other actions against plaintiff. (Filing [20](#).) The court also denied plaintiff's request for costs without prejudice to reassertion. (*Id.* at CM/ECF p. 5.) On August 5, 2011, plaintiff filed a motion for attorney's fees and costs, together with a supporting affidavit and billing statements. (Filings [22](#) and [23](#).) Defendants have not objected to this motion. (See Docket Sheet.) The court finds that the requested fees and costs are fair and reasonable and concludes that plaintiff's motion should be granted.

Pursuant to [Federal Rule of Civil Procedure 54\(b\)](#), the court may "direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay." [Fed. R. Civ. P. 54\(b\)](#). In doing so, the court "must first determine that it is dealing with a final judgment. . . . in the sense that it is an ultimate disposition of an individual claim. Then: In determining that there is no just reason for delay, the district court must consider both the equities of the situation and judicial administrative interests, particularly the interest in preventing piecemeal appeals." [Outdoor Cent., Inc. v. GreatLodge.com, Inc.](#), 643 F.3d 1115, 1118 (8th Cir. 2011) (internal citations and quotations omitted).

This is an interpleader action where the court has discharged plaintiff from further liability, entered a restraining order to protect plaintiff against duplicative litigation and

awarded plaintiff attorney's fees and costs. (*See* Filing [20](#).) In light of this, and the fact that this is the ultimate disposition of plaintiff's involvement, the court finds that there is no just reason to delay entry of judgment in plaintiff's favor. Accordingly,

IT IS ORDERED:

1. Plaintiff's motion for attorney's fees and costs (filing [22](#)) is granted.
2. Final judgment shall be entered in plaintiff's favor and there is no just reason for delay pursuant to [Fed. R. Civ. P. 54\(b\)](#).
3. Judgment shall be entered by separate document dismissing plaintiff from this matter and providing that plaintiff is awarded attorney's fees and costs in the amount of \$896.50, which shall be charged against the interpleader funds.
4. The entry of judgment in favor of plaintiff does not close this case.
5. This matter is referred to Magistrate Judge Zwart for further progression.

DATED this 24th day of August, 2011.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge

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